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20 Massachusetts Avenue NW, Rm. A3042
Washington, DC 20529



**U.S. Citizenship
and Immigration
Services**

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[Redacted]

FILE: [Redacted]
LIN 03 086 53772

Office: NEBRASKA SERVICE CENTER

Date: **SEP 29 2004**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for Alien Fiancé(e) Pursuant to Section 101(a)(15)(K) of the Immigration and
Nationality Act, 8 U.S.C. § 1101(a)(15)(K)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to
the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is a naturalized citizen of the United States who seeks to classify the beneficiary, a native and citizen of Cambodia, as the fiancée of a United States citizen pursuant to section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K).

The director denied the petition after determining that the petitioner had not offered documentation evidencing that he and the beneficiary had personally met within two years before the date of filing the petition, as required by section 214(d) of the Act and had not submitted credible documentary evidence to establish the fiancée relationship within the meaning of section 101(a)(15)(K) of the Act. *Decision of the Director*, dated February 5, 2004.

Section 101(a)(15)(K) of the Act, 8 U.S.C. § 1101(a)(15)(K), provides nonimmigrant classification to an alien who:

- (i) is the fiancé(e) of a U.S. citizen and who seeks to enter the United States solely to conclude a valid marriage with that citizen within 90 days after admission;
- (ii) has concluded a valid marriage with a citizen of the United States who is the petitioner, is the beneficiary of a petition to accord a status under section 201(b)(2)(A)(i) that was filed under section 204 by the petitioner, and seeks to enter the United States to await the approval of such petition and the availability to the alien of an immigrant visa; or
- (iii) is the minor child of an alien described in clause (i) or (ii) and is accompanying, or following to join, the alien.

Section 214(d) of the Act, 8 U.S.C. § 1184(d), states, in pertinent part, that a fiancé(e) petition:

... shall be approved only after satisfactory evidence is submitted by the petitioner to establish that the parties have previously met in person within two years before the date of filing the petition, have a bona fide intention to marry, and are legally able and actually willing to conclude a valid marriage in the United States within a period of ninety days after the alien's arrival. ...

Pursuant to 8 C.F.R. § 214.2(k)(2), the petitioner may be exempted from this requirement for a meeting if it is established that compliance would:

- (1) result in extreme hardship to the petitioner; or
- (2) that compliance would violate strict and long-established customs of the beneficiary's foreign culture or social practice, as where marriages are traditionally arranged by the parents of the contracting parties and the prospective bride and groom are prohibited from meeting subsequent to the arrangement and prior to the wedding day. In addition to establishing that the required meeting would be a violation of custom or practice, the petitioner must also establish that any and all other aspects of the traditional arrangements have been or will be met in accordance with the custom or practice.

The regulation at section 214.2 does not define what may constitute extreme hardship to the petitioner. Therefore, each claim of extreme hardship must be judged on a case-by-case basis taking into account the totality of the petitioner's circumstances. Generally, a director looks at whether the petitioner can demonstrate the existence of circumstances that are (1) not within the power of the petitioner to control or change, and (2) likely to last for a considerable duration or the duration cannot be determined with any degree of certainty.

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with the Immigration and Naturalization Service [now Citizenship and Immigration Services (CIS)] on January 21, 2003. Therefore, the petitioner and the beneficiary were required to have met during the period that began on January 21, 2001 and ended on January 21, 2003.

In response to the director's request for evidence and additional information, the petitioner failed to submit evidence of having met the beneficiary during the two-year period immediately preceding the filing of the Form I-129F petition and failed to provide copies of the final divorce decrees for the petitioner and his former spouse and the beneficiary and her former spouse.

On appeal, the petitioner submits a copy of the Dissolution of Marriage for he and his former spouse. The petitioner also provides a statement indicating that he and the beneficiary were together during November 2002, prior to the filing of the Form I-129F petition, and again during December 2003. *Affidavit of Tan Vong*, dated February 13, 2004. The petitioner submits copies of his United States passport pages reflecting entries and exits from Cambodia as claimed as well as a visa issued by the Kingdom of Cambodia on June 11, 2002 in the name of the petitioner.

On appeal, the petitioner indicates that a previously submitted foreign document constitutes the equivalent of a divorce decree for the beneficiary and her former spouse. *Letter from Tan Vong*, dated February 16, 2004. The AAO notes that the petitioner fails to provide an English translation for the referenced document and, therefore, CIS is unable to verify the validity of the document for purposes of substantiating that the beneficiary and her former spouse are legally divorced. Therefore, the appeal will be dismissed.

Pursuant to 8 C.F.R. § 214.2(k)(2), the denial of the petition is without prejudice. The petitioner may file a new Form I-129F petition on the beneficiary's behalf when sufficient evidence is available.

The burden of proof in these proceedings rests solely with the petitioner. *See* Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.